

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

CITIBANK, N.A., AS TRUSTEE,)	
)	
Plaintiff,)	Civil No. 05-40045-FDS
)	
v.)	
)	
JOHN P. PHELAN, WENDY M. PHELAN,)	
DAVID LABRIE, THE UNITED STATES)	
OF AMERICA, O'CALLAGHAN)	
CONSTRUCTION CO., and THE)	
COMMONWEALTH OF MASSACHUSETTS)	
DEPARTMENT OF REVENUE,)	
)	
Defendants.)	

UNITED STATES' ANSWER TO CROSS-CLAIM OF DAVID LABRIE

The United States responds to the specific allegations of the cross-claim as follows:

1. *Defendant David LaBrie (hereinafter "LaBrie") avers that he has an equitable interest or lien in the subject foreclosure surplus proceeds pursuant to his Attachment issued by the Worcester District Court on February 20, 2004 and recorded in the Worcester County Registry of Deeds, Book 32882, Page 335, recorded February 23, 2004 (a true copy attached hereto as Exhibit A).*

RESPONSE: The United States admits that attached as Exhibit A is a purported copy of a writ of attachment in the amount of \$12,000.00 issued by the Worcester County District Court on or about February 20, 2004. It is not clear from the copy received by the United States

when this document was filed with the Worcester County Registry of Deeds. The United States is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 1 of the cross-claim.

2. *LaBrie avers that he has an equitable interest or lien in the subject foreclosure surplus proceeds pursuant to his Executions (one against John P. Phelan and one against Wendy M. Phelan) both issued by the Worcester District Court on May 26, 2004 in the amount of \$12,907.77 and recorded in the Worcester County Registry of Deeds, Book33801, Page 77, and at book 33801, Page 81, respectively, on June 4, 2004 (a true copy of both Executions are attached hereto collectively as Exhibit B).*

RESPONSE: The United States admits that attached as Exhibit B are purported copies of two Executions issued by the Worcester District Court on May 26, 2004 in the amount of \$12,907.77 against John Phelan and Wendy Phelan, respectively. The United States is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 2 of the cross-claim.

3. *LaBrie avers that he is owed no less than \$12,907.77 as of June 4, 2004, plus further interests and costs pursuant to the Execution.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the cross-claim.

4. *Upon information and belief, all other equitable interests or liens upon the subject foreclosure surplus proceeds are junior and subordinate to LaBrie's equitable interest or lien.*

RESPONSE: The United States is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the cross-claim.

5. *LaBrie, his equitable interest or lien being superior to any interest or lien of any other Defendant, is therefore entitled to all of the foreclosure surplus proceeds up to the value of his equitable interest or lien, including interest, costs, and attorney fees.*

RESPONSE: The United States denies the allegations contained in paragraph 5 of the cross-claim.

WHEREFORE, the United States requests (1) that its interests be paid pursuant to the priority determined by this Court with respect to the surplus funds; (2) that the cross-claim defendant's request for payment of its costs and fees from the surplus fund

be denied to the extent those funds are owed to the United States; and (3) such other relief as this Court deems just and proper.

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each other party by mail on

6/16/05 - /s/ Lydia B. Turanchik

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

/s/ Lydia Bottome Turanchik

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